place, he said that this was not a petition for a winding-up of a company but a petition under section 181 of the Companies Act of 1965 for remedies upon the grounds of oppression of minorities. He further submitted that the powers of the court to allow a petition to be amended or withdrawn were provided for in section 221(2)(e) which referred in particular to petitions for winding-up under Part X of the Act. Dato' Abdoolcader therefore submitted that in any petition which did not fall under Part X and which was in fact under Part VII which provided for arrangements and reconstructions, the court had no powers to grant leave to amend. Mr. Lim Ewe Hock, however, suggested that the court had general powers to allow amendments under Order 28 rule 1 of the Rules of the Supreme Court, 1957. At the conclusion of the submissions, I dismissed the application with costs.

Mr. Lim Ewe Hock then applied for the case to be adjourned into open court for further arguments. The case was accordingly re-opened on the 12th May, 1969. At this further hearing Mr. Lim Ewe Hock abandoned his application for leave to amend and sought merely to withdraw the petition with liberty to file a fresh petition under the alternative prayer. His reason was that that would be tidier and cheaper and as on his own admission the numerous amendments sought to be made would appear to introduce a new case. He again relied upon the provisions of Order 28 rule 1. He further submitted that there was a general discretion in the court to allow amendments even at a late stage, and that the powers of the court on the hearing of a petition provided under section 221 applied to a petition under section 181 so that the court had the jurisdiction or the discretion to allow the petition to be amended or withdrawn. On the other hand, Dato' Abdoolcader submitted in short that the powers of the court under section 221 could not extend to a petition under section 181 and that a petition under section 181 in the absence of any provisions in the Act stood to be determined on this particular issue upon the Act itself.

Now, section 221(1) refers to the hearing of a winding-up petition. This fact, coupled with the other fact that section 221 comes under Part X in the winding-up of companies, in my view, established that the powers are exercisable only in a petition properly so-called for the winding-up of a company. Where a petition is made under section 181 for remedies for the relief of oppression of minorities and a prayer for a winding-up is only made in the alternative, I do not think, with respect, that such a petition can properly be called a winding-up. I therefore take the view that in a petition under section 181, the discretion under section 221(2)(e) to allow for amendments or for withdrawal with liberty to file a fresh petition cannot be extended to it, and that the Companies (Winding-up) Rules, 1946 did not apply.

But this does not, in my view, mean that there is a *lacuna* in the law, as suggested. O. 53B of the Rules of the Supreme Court lays down the procedure on applications under the Companies Ordinance which though expressed to be in relation to the 1940 Ordinance must be considered to be extended to the Companies Act of 1965. If I am right in this, then under rule 3 which reads:—

> "3. The Rules of the Supreme Court for the time being in force and the general practice of that court shall apply as regards all proceedings in relation to applications to which this Order relates so far as may be practicable except if and so far as this Order otherwise provides."

the discretion of the High Court under the Rules of the Supreme Court is available to the applicant.

Accordingly I revoke the order made by me in chambers and give leave to the applicant to withdraw his petition with leave to file, if so desired, a fresh petition. The applicant will have to pay all the costs thrown away.

Order accordingly.

Solicitors: *Lim Ewe Hock; Presgrave & Matthews.*

RE HAJI SUHAIMI BIN DATO' HAJI KAMARUDDIN

[O.C.J. (Ong Hock Thye C.J. (Malaya) August 25, 1969]

[Kuala Lumpur — Petition for Admission No. 14 of 1969]

Advocates and Solicitors — Admission — Special grounds — Experience required — Judicial and Legal service — Advocates and Solicitors Ordinance, 1947, s. 5(5).

The petitioner applied under section 5(5) of the Advocates and Solicitors Ordinance for shortening of the statutory period required for posting of the notice by 9 days and for shortening the statutory period of reading in chambers by 32 days. The special grounds relied on was that the petitioner had acquired experience in the Judicial and Legal Service. He had passed the oral examination and been certified as a suitable person for admission.

Held: appointment in the Judicial and Legal Service may be considered as a special ground that the applicant was one proven to have afforded the requisite experience and knowledge of law and practice, and in the circumstances of this case the prayers for shortening would be allowed.

Cases referred to:—

(1) *In Re G.G. Ponnambalam* [1969] 2 M.L.J. 263.

(2) *Re Chan Sek Keong* [1962] M.L.J. 88, 90.

(3) *Re Richard Chuan Hoe Lim* [1936] M.L.J. 268, 269.

PETITION FOR ADMISSION

Robert K.C. Hoh for the petitioner.

Mokhtar bin Haji Sidin for the Attorney-General.

K.A. Menon for the Bar Council, States of Malaya.

M.S. Naidu for the Bar Committee, Selangor.

Cur. Adv. Vult.

Ong Hock Thye C.J. (Malaya): Following closely on the heels of another application — by Queen's Counsel for Ceylon (*In re G.G. Ponnambalam*[1]) — this petition for admission as an advocate and solicitor of the High Court in Malaya calls for the exercise of the court's discretion "on special grounds", under sub-section (5) of section 5 of the Advocates and Solicitors Ordinance 1947, allowing shortening of the statutory period of 6 months required for posting of the notice and reading in chambers prescribed by sub-sections (2) and (3) of the same section in the case of this petitioner. Ordinarily those conditions have to be fulfilled before the petition for admission can be heard.

The petitioner was called to the Bar of England on February 9, 1965. He had attended the Post Final Practical Training Course conducted by the Council of Legal Education. On February 21, 1969 he filed his petition herein. The date of the last posting of the notice under sub-section (2) of section 5 was February 24, 1969. The requisite period of posting, therefore, does not expire till August 24, 1969. He commenced reading in chambers on March 17, 1969 and passed his oral examination, as required by sub-section (1) of section 7 on July 26, 1969. The required period of reading in chambers does not expire till September 17, 1969. This petition came on for hearing on Friday, August 15, 1969. The posting of notice thus needed curtailment by 9 days and the reading in chambers by 32 days.

The "special grounds" upon which the court is urged to exercise its discretion are set out in the petitioner's affidavit as follows:—

"7. That from 1st June 1965 till 31st March 1969 when I terminated my service I was in the Judicial and Legal Service holding the posts of Deputy Public Prosecutor and Federal Counsel, West Malaysia and Acting Legal Adviser, State of Penang, particulars of which are as follows:—

(1) 1.6.65 to 30.7.65 — Deputy Public Prosecutor, Selangor.

(2) 1.8.65 to 30.9.65 — Acting Deputy Public Prosecutor, Perak.

(3) 1.10.65 to 30.12.68 — Deputy Public Prosecutor, Penang.

(4) 1.1.68 to 1.4.68 — Acting Legal Adviser, Penang.

(5) 1.1.69 to 31.3.69 — Deputy Public Prosecutor, Selangor.

8. That during the period from 1st June 1965 till 31st March 1969 I have had experience in the branches of the law short particulars of which are as follows:—

Supreme Court Rules, Subordinate Court Rules, Criminal Procedure Code, Penal Code, Evidence Ordinance, Federal Constitution, Courts of Judicature Act, National Land Code and the law of torts."

On his behalf it was urged that, during the 3 years and 10 months which he spent in Government service, he had acquired sufficient experience and knowledge of the laws ordinarily required of new practitioners, that the public interest is served if he has acquired such experience and practice as are ordinarily obtained by reading in chambers for six months and that, added to his past experience, five months of supplemental reading in chambers is "not only equivalent to but in excess of that which a fresh graduate would acquire by reading in chambers for 6 months".

The application and petition were not opposed by the Attorney-General or the Selangor Bar Committee, the lone voice of dissent being that of the Bar Council. On the question of fitness, the Bar Council, of course, was in no position to contradict the board of examiners appointed by itself under section 7(1)(a), who reported on the results of the examination held on July 26 that the petitioner was "a suitable person for admission". The objection consequently rested on the purely technical ground of non-compliance with sub-sections (2) and (3) of section 5. That previous experience counts for nothing at all in any case was never the Bar Council's contention, as counsel frankly conceded.

In *Re Chan Sek Keong,*[2] I recalled what Coke once said, that discretion is a science or understanding to discern between shadows and substance. The substance, in the instant case, is as stated by Adrian Clark J. in *Re Richard Chuan Hoe Lim*[3]:—

"That the general principle underlying the requirements of section 5 of the Ordinance is that persons admitted to practise the law . . . should not only have the necessary academic qualifications but should also have practical experience fitting them to deal with every kind of legal work with which an advocate and solicitor of this court has the right to deal and with which he holds himself out to the public, by the fact of his admission, as being professionally competent to deal."

Subsection (5) of section 5 provides that the court "may on special grounds" shorten the period or dispense with the requirements of sub-sections (2) and (3) "and, may, if it thinks fit, admit and enrol the petitioner at any time". The question, therefore, is whether or not I think it fit that the substance should outweigh

the shadow. Is the sum total of the experience gained by the petitioner in actual service likely to be so materially enhanced by one more month of reading in chambers that it ought to be treated as indispensable to his qualification? I do not think so. An appointment in the Judicial and Legal Service is not something that ordinarily comes the way of those who have been called to the Bar. In that sense it may be considered as a special ground provided that the appointment was one proven to have afforded the requisite experience and knowledge of law and practice. The petitioner's fitness having been certified by the board of examiners, I should, as it were, be straining at a gnat to swallow a camel if I should withhold exercise of my discretion for nothing. A few days more or less can make no difference: *de minimis non curat lex.*

Accordingly the prayers in the petition will be allowed and the petitioner admitted and enrolled as an advocate and solicitor of the High Court in Malaya.

Petition allowed.

LIAN SENG CONSTRUCTION CO. v. YUZIN

[O.C.J. (Syed Agil Barakbah J.) August 30, 1969]

[Kuala Lumpur — Civil Suit No. 22283 of 1965]

Contract — Building contract — Arbitration — Position of architect — Arbitrator or quasi-arbitrator — Failure of arbitrator to give written decision in disputes or differences — Whether bar to arbitration — Final certificate — Effect of certificate — Estoppel — Arbitration Ordinance, 1950, s. 5.

The defendant applied for stay of proceedings in an action by the plaintiff, a building contractor, pursuant to section 5 of the Arbitration Ordinance. One of the grounds of opposition to the application was that the provisions of the building contract requiring the arbitrator to give a written decision on disputes or differences had not been complied with.

Held: (1) the arbitration clauses in this case were wide enough to give jurisdiction to the arbitrator to go into the disputes which had arisen and to supply the deficiency that has occurred, i.e., the non-fulfilment of a condition precedent by the architect in that he had failed to give a written decision in the dispute;

(2) the plaintiff had failed to show sufficient reason why the disputes should not be referred to arbitration and therefore the application for stay of proceedings will be allowed.

Cases referred to:—

(1) *Lim Su Sang* v. *Teck Guan Construction and Development Co. Ltd.* [1966] 2 M.L.J. 29.

(2) *Willesford* v. *Watson* (1873), L.R. 8 Ch. App. 473, 480.

(3) *Lan You Timber Co.* v. *United General Insurance Co. Ltd.* [1968] 1 M.L.J. 181 p. 182.

(4) *Re Carus-Wilson & Greene* (1886), 18 Q.B.D. 7, C.A.

(5) *Pawley* v. *Turnbull* (1861), 66 E.R. 327.

(6) *Hickman & Co.* v. *Roberts* [1913] A.C. 229.

(7) *Smith Construction Co. Ltd.* v. *Phit Kirivatna* [1955] M.L.J. 8.

(8) *Bristol Corporation* v. *Aird & Co.* [1911-13] All E.R. Rep. 1076.

(9) *Freeman & Sons* v. *Chester Rural District Council* [1911] 1 K.B. 783.

(10) *Prestige & Co. Ltd.* v. *Brettell* [1938] 4 All E.R. 346.

(11) *Brodie* v. *Cardiff Corporation* [1919] A.C. 337.

CIVIL SUIT

K.L. Devaser for the plaintiff.

Mrs. S.B. Menon for the defendant.

Cur. Adv. Vult.

Syed Agil Barakbah J.: This is an application by the defendant for an order that the proceedings in this action be stayed pursuant to section 5 of the Arbitration Ordinance, 1950. On 3rd January, 1969, the plaintiff company applied for an order that the plaintiff be at liberty to sign judgment against the defendant for $19,449 being the balance of the price for work done and materials supplied for a building on the defendant's land in Lot No. 201, section 43, Jalan Ampang, Kuala Lumpur. The plaintiff and the defendant entered into a written contract on 16th November, 1966, whereby the plaintiff agreed to erect and complete a residential building on the defendant's land according to drawings and specifications therein contained for a sum of $57,325. For the purpose of the said contract the defendant engaged an architects' firm known as Architects Team 3 having their office at A.I.A. Building, Kuala Lumpur.

The defendant entered an appearance and then without taking any further step applied to have the proceedings stayed on the ground that what was involved were disputes in connection with the agreement above-mentioned and were, therefore, fit and proper to be referred to and decided by arbitration under clause 26 of the contract and that at the time when the action was commenced the defendant was and is still ready and willing to do and concur in all things necessary for causing the said matter to be decided by arbitration.

Under section 5 of the Arbitration Ordinance, 1950, the court has a discretion in relation to such application but it is a discretion which, in the absence of any reason being shown to the contrary, should be exercised in favour of the applicant. This is in accordance with the principle stated in *Lim Su Sang v. Teck Guan Construction and Development Co. Ltd.*[1] in which Thomson L.P. quoted the views of Lord Selborne in the case of *Willesford v. Watson*[2]:—